

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Sutro Corporation, c/o John H. Runkle)	File Number EB-02-PO-136
Owner of Antenna Structure at 44°03'44" North)	NAL/Acct. No. 200232920001
Latitude and 116°54'22" West Longitude)	FRN 0007-2822-39
Payette, Idaho)	
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NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 31, 2002

By the Enforcement Bureau, Portland Resident Agent Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Sutro Corporation c/o John H. Runkle, willfully and repeatedly violated Section 17.4(a) of the Commission's Rules ("Rules")¹ by failing to register its antenna structure located in Payette, Idaho at 44°03'44" North Latitude and 116°54'22" West Longitude. We find Sutro Corporation c/o John H. Runkle apparently liable for forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. On November 30, 1995, the Commission adopted rules requiring tower owners to conform to antenna structure registration procedures.² On January 13, 1999, the Commission released a Public Notice, "No-Tolerance Policy Adopted For Unregistered Antenna Structures," stating that the Commission would "issue monetary forfeitures to owners and licensees whose structures are not in compliance with the Commission's registration and lighting rules."³

¹ 47 C.F.R. § 17.4(a).

² *Streamlining the Commission's Antenna Structure Clearance Procedures and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures*, WT Docket No. 95-5, Report and Order, 11 FCC Rcd 4272 (1995).

³ Public Notice, "No-Tolerance Policy Adopted for Unregistered Antenna Structures," 1999 WL 10060 (WTB rel. January 13, 1999).

3. On May 23, 2002, a search of the Commission's antenna structure registration records was conducted while investigating a radio frequency interference problem. The search revealed that the 405 foot tower located at 44°03'44" North Latitude and 116°54'22" West Longitude in Payette, Idaho was not registered with the Commission. According to the City of Payette tax assessor's office, the tower belongs to Sutro Corporation c/o John H. Runkle.

4. On June 11, 2002, an Agent from the Portland Resident Agent Office advised John H. Runkle that the tower must be registered. A subsequent search on July 30, 2002, of the Commission's antenna structure registration records found that the tower remains unregistered.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

6. The Commission's antenna structure registration, construction, marking and lighting requirements operate in concert with FAA regulations to ensure that antenna structures do not present hazards to air navigation. Generally, Sections 17.4 and 17.7 of the Rules require owners of antenna structures that are greater than 200 feet in height to register the structure with the Commission and comply with prescribed painting and lighting specifications designed to ensure air safety.

7. Specifically, Section 17.4(a) of the Rules provides that, effective July 1, 1996, owners of any existing antenna structures that require notification to the Federal Aviation Administration (e.g., structures 200 feet or more in HAAT) must register the structure with the Commission. Section 17.4(a)(2) of the Rules provides that, effective July 1, 1998, owners of an antenna structure that had been assigned painting or lighting requirements prior to July 1, 1996, must register the structure with the Commission. The tower structure located at 44°03'44" North Latitude and 116°54'22" West Longitude and owned by Sutro Corporation c/o John H. Runkle

⁴ Section 312(f)(1) of the Act, 47 U.S.C § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provisions of this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 312(f)(2) of the Act, 47 U.S.C § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

requires registration, yet is unregistered. Based on the evidence before us, we find that Sutro Corporation c/o John H. Runkle willfully and repeatedly violated Section 17.4(a) of the Commission's Rules by failing to register the antenna structure.

8. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement") and Section 1.80(b)(4) of the Rules,⁶ for failure to file required forms is \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Considering the record as a whole and the statutory factors listed above, this case warrants a forfeiture in the amount of \$3,000.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Sutro Corporation c/o John H. Runkle is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willfully and repeatedly violating Section 17.4(a) of the Commission's Rules by failing to register an antenna structure that requires notification to the Federal Aviation Administration.⁸

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,⁹ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Sutro Corporation c/o John H. Runkle SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above.

12. The response, if any, must be mailed to the Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and must include the NAL/Acct. No. and FRN referenced above.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80, 17.4.

⁹ 47 C.F.R. § 1.80.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Sutro Corporation c/o John H. Runkle, P.O. Box 1826, Boise, Idaho 83701.

FEDERAL COMMUNICATIONS COMMISSION

James M. Lafontaine
Resident Agent, Portland Office
Enforcement Bureau

¹⁰ See 47 C.F.R. § 1.1914.